IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.208 OF 2003

1. Mr. Belarbino Dias Mandoli, major;

2. Mr. Vital Dias Mandoli, major;

3. Miss Carminia Dias Mandoli,major;

4. Mrs. Teodolinda Dias, major,
her husband,

All residents of Cavelossim,
Salcete,Goa ... PETITIONERS.

VERSUS

1. Shri G.A. Gonsalves,
major, resident of Gujira,
Santa Cruz,Ilhas-Goa;

2. Mrs. Maria Bernadette Dias
Mandoli, major, resident
of Malwara,
Agassaim-Goa;

3. Mrs. Avita Dias Mandoli,
major, resident of Cave-
lossim, Salcete,Goa;

4. Shri Dexter Rodrigues,
major, resident of Cave-
lossim, Salcete, Goa;

5. Shri Lucio C. Viega,
resident of Cavelossim,
Salcete-Goa ... RESPONDENTS.

Mr. M.S. Sonak and Ms Pooja Bharne, Advocates for the Petitioners.

Mr. Shivan Dessai, Advocate for the Respondents.

CORAM : F.I. REBELLO,J.

DATED : JULY 11, 2003.

ORAL JUDGMENT

Rule. Respondents waive service. Heard forthwith.

2. Land has been acquired under the provisions of the Land Acquisition Act. The Petitioners are the legal representatives of the late Felix Dias Mandoli who has been described as Applicant No.3. Applicant No.2 was Antonio Dias Mandoli who has also since expired and is represented by his legal heirs. Applicant No.1 is the present Respondent No.1. In the proceedings for acquisition, a dispute was raised by the Applicants herein that they were entitled to the land. The Land Acquisition Officer finding that there was a dispute as raised by the original Applicants Nos. 2 and 3 pursuant to the application dated 12th September, 1988, referred the matter to the Reference Court for apportionment of the compensation and/or deciding the title as to who is to be entitled for compensation.

3. In the Reference Court a written statement came to be filed on behalf of Applicant No.1, who in fact, before the District Court is described as Applicant No.2. In that written

statement in paragraph 7 it was set out that the property which is the subject-matter of the acquisition, was claimed by the Applicants Nos. 2 and 3 in the ratio of 2/3:1/3, respectively. That was further elaborated in paragraphs 9, 10 and 13 where it was expressly pleaded that Applicants Nos. 2 and 3 are the only persons entitled to the compensation awarded. The same lawyer was appearing. However, it transpires that there is no independent written statement or application filed before the Reference Court by the Petitioner/original Applicant No.3, now represented by his legal heirs, the Petitioners.

4. In the course of evidence before the Court, the evidence of the present Petitioner No.4 was being recorded. The legal heirs of original Applicant No.2, for some reason, chose not to lead any evidence. In the written statement filed on behalf of original Applicant No.2, documents were relied upon. In the course of the evidence, the deponent/Petitioner No.4 sought to rely on the said documents which were annexed to the list of written statement filed by the original Applicant No.2. An application was made on behalf of the Petitioners which was opposed by Respondent No.1. The Trial Court held that the party had not filed the list of

documents and moreover it was an old case and in these circumstances, the request for adjournment to produce the documents was rejected. It is this Order which is the subject-matter of the present challenge.

5. The dispute before the Reference Court was subsequent to the Land Acquisition Officer's being unable to decide the title to the property. It is in these circumstances that the reference was made to the Reference Court. The dispute before the Reference Court was basically on the application made by the two Applicants under Section 30 of the Land Acquisition Act. Therein a reference was made to documents including the inventory proceedings. These are the very documents sought to be relied upon in the list annexed to the written statement of the original Applicant No.2. The question really is whether on the reference of the dispute there was a need that there must be an independent written statement. Strictly speaking, the Reference Court must decide in the reference. In practice parties file pleadings so that it is open to the Reference Court to frame the issues for determination. In the instant case, the Respondent No.1 was aware of the documents which was sought to be relied. The written statement filed before the Reference Court

on behalf of the original Respondent/Applicant No.2 at least prima facie would disclose that it was on behalf of both the original Applicants Nos. 2 and 3 considering the averment which have been adverted to earlier. In these circumstances, the Order of the Trial Court for all purposes took a hypertechnical view and not in aid of justice. It is true that the parties must seek to rely on the documents and must disclose them to the other side before the hearing. In this case, the reference application itself had already disclosed the documents and that was reiterated in the written statement filed on behalf of Applicant No.2 whose written statement was construed as on behalf of Applicants Nos. 2 and 3 considering the averments. In the light of that, in my opinion, that Order recorded in the written statement in the evidence on 2-3-2002 will have to be set aside. At the highest the Respondent No.1 can be compensated in terms of money.

6. In the light of that, the following Order:-

The application by the Petitioners herein dated 2-3-2002 is allowed to the extent that the Petitioners are permitted to produce and rely on the documents referred to in the pleadings of Applicant

No.2. For that purpose the Reference Court to permit the Petitioner No.4 to be re-examined and thereafter permit the Respondents herein to cross-examine the Petitioners. Petitioners to pay to Respondent No.1 costs quantified in a sum of Rs.2,500/- within four weeks from today as a condition precedent. Rule made absolute accordingly with no order as to costs.

F.I. REBELLO,J.

ac.